R.S. Klein Trailer Repair *and* Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 13–CA–32192

March 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

Upon a charge filed by Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO, the Union, on December 10, 1993, the Acting General Counsel of the National Labor Relations Board issued a complaint on January 14, 1994, against R.S. Klein Trailer Repair, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 17, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On February 22, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 31, 1994, notified the Respondent that unless an answer was received by February 10, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation with an office and place of business in Chicago, Illinois, has been engaged in the repair, service, and maintenance of tractor trailers. During the calendar year ending December 31, 1993, the Respondent, in conducting its business operations, purchased and received at its Chicago, Illinois facility goods valued in excess of $50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part time mechanic employees, including journeyman mechanics Class A and Class B, apprentice, tireman, painters, parts foreman, partsman and utility employees employed by Respondent at its facility which was located at 4140 S. Oakley, Chicago, Illinois; but excluding office and clerical employees, truck drivers, janitors, general laborers and all guards, professional employees and supervisors as defined in the Act.

At all material times, the Union has been certified by the Board as the exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About December 1, 1991, the Respondent and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the unit, which agreement was effective until November 30, 1994.

Since about September 1993, and at all material times, the Respondent ceased its business operations and terminated its employees.

About September 13, 1993, the Union, by letter, requested that the Respondent bargain over the effects of its decision to cease operations.

The Respondent unilaterally ceased its business operations and terminated its employees as set forth above without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to the effects of this conduct, notwithstanding that such subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Since about September 1993, and at all material times, the Respondent has failed and refused to make the appropriate accrued vacation payments to unit em-

ployees as required by article 9 of the collective-bargaining agreement.

The Respondent unilaterally failed and refused to make such payments without the Union's consent, without prior notice to the Union, and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct, notwithstanding that such subjects also relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As a result of the Respondent's unlawful failure, since about September 1993, to bargain in good faith with the Union about the effects of its decision to close its facility, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and shall accompany our Order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent further violated Section 8(a)(5) and (1) by failing since about September 1993 to make appropriate accrued vacation payments as required by article 9 of its 1991–1994 collective-bargaining agreement, we shall order the Respondent to honor the terms and conditions of the agreement, and to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, R.S. Klein Trailer Repair, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit regarding the effects of its decision to cease operations at its Chicago, Illinois facility:

All full time and regular part time mechanic employees, including journeyman mechanics Class A and Class B, apprentice, tireman, painters, parts foreman, partsman and utility employees employed by Respondent at its facility which was located at 4140 S. Oakley, Chicago, Illinois; but excluding office and clerical employees, truck drivers, janitors, general laborers and all guards, professional employees and supervisors as defined in the Act.

(b) Failing and refusing to make the appropriate accrued vacation payments to its unit employees as required by article 9 of its 1991–1994 collective-bargaining agreement with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to the effects on employees of its decision to close it Chicago, Illinois facility, and pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision, plus interest.

(b) Honor the provisions set forth in article 9 of the 1991–1994 collective-bargaining agreement regarding accrued vacation pay, and make whole the unit employees for any loss of earnings suffered as a result of its failure to do so since September 1993 in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail an exact copy of the attached notice marked "Appendix,"[1] to the Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO and to all employees in the unit who were employed by the Respondent at its former Chicago, Illinois facility. Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt as here directed.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1994

James M. Stephens, Member

Dennis M. Devaney, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive collective-bargaining representative of our employees in the following appropriate unit regarding the effects of our decision to cease operations at our Chicago, Illinois facility:

All full time and regular part time mechanic employees, including journeyman mechanics Class A and Class B, apprentice, tireman, painters, parts foreman, partsman and utility employees employed by us at our facility which was located at 4140 S. Oakley, Chicago, Illinois; but excluding office and clerical employees, truck drivers, janitors, general laborers and all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT fail and refuse to make the appropriate accrued vacation payments to the unit employees as required by article 9 of our 1991–1994 collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to the effects on unit employees of our decision to close our Chicago, Illinois facility, and WE WILL pay limited back-

pay to unit employees in the manner required by the Order issued by the National Labor Relations Board.

WE WILL honor the provisions of article 9 of the 1991–1994 collective-bargaining agreement regarding accrued vacation pay, and WE WILL make whole unit employees for any loss of earnings resulting from our failure to do so since September 1993.

R.S. KLEIN TRAILER REPAIR